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10/530,142	05/19/2006	Marc Seidel	6097P060	9664
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BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP			EXAMINER	
1279 OAKMEAD PARKWAY			HOLLOWAY, JASON R	
SUNNYVALE, CA 94085-4040			ART UNIT	PAPER NUMBER
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			10/20/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/530,142	SEIDEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JASON HOLLOWAY	4165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 May 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

This communication is a first Office Action Non-Final rejection on the merits.

Claims 1-9, as originally filed, are currently pending and have been considered below.

### ***Claim Objections***

1. Claims 1, is objected to because of the following informalities:

In claim 1 line 8, the word "and" should be deleted.

2. Claims 8 and 9 are objected to under 37 CFR 1.75(c) as being in improper form because they are dependent from multiple dependent claim 7. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, the claim recites a door is included in the first cylindrical tower segment (item 14), however item 14 of figures 2-5 is not the lowest segment, segment 16 according to figure 2-4 is the lowest segment and should therefore be receiving the door, as is illustrated in figures 2-4 and claimed in claim 3 of the instant application.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maliszewski et al. (6,467,233).

**Regarding claim 1,** Maliszewski et al. teaches a tower having a height ranging between a minimum height and a maximum height (column 2 lines 32-34 teaches a range of height), in particular for a wind energy turbine (abstract teaches wind generator), comprising:

a first conical tower segment (56, figure 2) comprising a steel tube (column 2 lines 15-18 teach steel construction) having a predetermined length (column 2 lines 2-4 teaches the size of the segments are chosen based on the designed tower height),

a second conical tower segment (58, figure 2) comprising a steel tube (column 2 lines 15-18 teach steel construction) having a predetermined length (column 2 lines 2-4 teaches the size of the segments are chosen based on the designed tower height), and

and a first cylindrical tower segment (22, figure 2) comprising a steel tube (column 2 lines 15-18 teach steel construction),

wherein the length of the first cylindrical tower segment (22) is capable of being adapted to the necessary height of the tower between its minimum height and its maximum height.

However, Maliszewski et al. fails to explicitly disclose the first cylindrical tower segment has a length between a predetermined minimum length and a predetermined maximum length, the minimum height being the sum of the predetermined lengths of the first and second conical tower segments and the minimum length of the first cylindrical tower segment, and the maximum height being the sum of the predetermined lengths of the first and second conical tower segments and the maximum length of the first cylindrical tower segment.

Maliszewski et al. discloses: "The towers of this invention can range in height from 32 to over 80 meters" (column 2 lines 32-34); parameters for tower segments for towers which are within the range of 50 meters (column 2 lines 35-37); parameters for tower segments which are within the range of 60-80 meters (column 2 lines 23-26); for the conical segments, the lengths are determined based on the design height of the tower (column 2 lines 2-4); and claims 10 and 16 claim the exact number of segments for different design tower heights.

Therefore, it would have been obvious to one of ordinary skill in the art to determine that the different segments of the tower of Maliszewski et al. have maximum and minimum predetermined lengths in order to create towers at the desired height specifications using an exact amount of segment sections. Further, it would have been obvious to one of ordinary skill in the art to use appropriate heights for the tower segments since it has been held that changes in size and/or proportion do not constitute patentable subject matter if the claimed relative dimensions would not perform

differently than the prior art device (In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984)).

**Regarding claim 2**, as best understood, Maliszewski et al. teaches the first cylindrical tower segment (22) comprises a door opening (21, column 33 lines 36-41).

**Regarding claim 3**, Maliszewski et al. teaches a second cylindrical tower segment (22, figure 2) comprising a steel tube (column 2 lines 15-18 teach steel construction) having a door opening (21, column 33 lines 36-41) and a length,

However, Maliszewski et al. fails to explicitly disclose the minimum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments, the minimum length of the first cylindrical tower segment and the length of the second cylindrical tower segment and wherein the maximum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments, the maximum length of the first cylindrical tower segment and the length of the second cylindrical tower segment.

Maliszewski et al. discloses: "The towers of this invention can range in height from 32 to over 80 meters" (column 2 lines 32-34); parameters for tower segments for towers which are within the range of 50 meters (column 2 lines 35-37); parameters for tower segments which are within the range of 60-80 meters (column 2 lines 23-26); for the conical segments, the lengths are determined based on the design height of the tower (column 2 lines 2-4); and claims 10 and 16 claim the exact number of segments for different design tower heights.

Therefore, it would have been obvious to one of ordinary skill in the art to determine that the different segments of the tower of Maliszewski et al. have maximum and minimum predetermined lengths in order to create towers at the desired height specifications using an exact amount of segment sections. Further, it would have been obvious to one of ordinary skill in the art to use appropriate heights for the tower segments since it has been held that changes in size and/or proportion do not constitute patentable subject matter if the claimed relative dimensions would not perform differently than the prior art device (In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984)).

**Regarding claim 4,** Maliszewski et al. teaches cylindrical (22, 24, 26, 28, etc) and conical (56, 58) tower segments having lengths (as illustrated in figure 2).

However, Maliszewski et al. fails to explicitly disclose the length of the second cylindrical tower segment is selectable between a predetermined minimum length and a predetermined maximum length, wherein the minimum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments and the minimum lengths of the first and second cylindrical tower segments and wherein the maximum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments and the maximum lengths of the first and second cylindrical tower segments.

Maliszewski et al. discloses: "The towers of this invention can range in height from 32 to over 80 meters" (column 2 lines 32-34); parameters for tower segments for towers which are within the range of 50 meters (column 2 lines 35-37); parameters for

tower segments which are within the range of 60-80 meters (column 2 lines 23-26); for the conical segments, the lengths are determined based on the design height of the tower (column 2 lines 2-4); and claims 10 and 16 claim the exact number of segments for different design tower heights.

Therefore, it would have been obvious to one of ordinary skill in the art to determine that the different segments of the tower of Maliszewski et al. have maximum and minimum predetermined lengths in order to create towers at the desired height specifications using an exact amount of segment sections. Further, it would have been obvious to one of ordinary skill in the art to use appropriate heights for the tower segments since it has been held that changes in size and/or proportion do not constitute patentable subject matter if the claimed relative dimensions would not perform differently than the prior art device (In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984)).

**Regarding claim 7**, Maliszewski et al. teaches a further tower segment (56, 58) is of a conical configuration (a conical configuration is disclosed in: the abstract; column 1 lines 15-16, 35-40; column 3 lines 30-31; figures 2, 4, 5 and 9).

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maliszewski et al. (6,467,233) in view of Hanson (4,272,929).

**Regarding claim 5**, Maliszewski et al. teaches a tower segment (22) which is reinforced by a concrete foundation (column 2 lines 35-45) comprising a door opening (21) and having a length, and

a connecting element (56) for connecting the first cylindrical tower segment (12) with the further tower segment (14) and having a length (the conical segment 56 is the connecting element between segments 12 and 14, wherein the sub-segments (i.e. 22, 24, 28, 30, etc) are welded to one another, essentially forming a single tower segment),

However, Maliszewski et al. fails to explicitly disclose the minimum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments, the minimum length of the first cylindrical tower segment and the lengths of the further tower segment and the connecting element and wherein the maximum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments, the maximum length of the first cylindrical tower segment and the lengths of the further tower segment and the connecting element.

Maliszewski et al. discloses: "The towers of this invention can range in height from 32 to over 80 meters" (column 2 lines 32-34); parameters for tower segments for towers which are within the range of 50 meters (column 2 lines 35-37); parameters for tower segments which are within the range of 60-80 meters (column 2 lines 23-26); for the conical segments, the lengths are determined based on the design height of the tower (column 2 lines 2-4); and claims 10 and 16 claim the exact number of segments for different design tower heights.

Therefore, it would have been obvious to one of ordinary skill in the art to determine that the different segments of the tower of Maliszewski et al. have maximum and minimum predetermined lengths in order to create towers at the desired height specifications using an exact amount of segment sections. Further, it would have been

obvious to one of ordinary skill in the art to use appropriate heights for the tower segments since it has been held that changes in size and/or proportion do not constitute patentable subject matter if the claimed relative dimensions would not perform differently than the prior art device (In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984)).

Further, Maliszewski et al. fails to explicitly disclose a lower tower segment comprising reinforced concrete.

Hanson teaches a tower for a wind generator wherein the lower segment of the tower is filled with concrete to give additional support to the tower structure (as disclosed in the abstract; figures 2 and 3).

Therefore, from the teaching of Hanson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to fill the base segment of Maliszewski et al. with concrete as taught by Hanson in order to provide a stronger tower structure with greater resistance to high winds and seismic activity.

**Regarding claim 6,** the combination of Maliszewski et al. and Hanson teaches cylindrical (22, 24, 26, 28, etc) and conical (56, 58) tower segments having lengths (as illustrated in figure 2).

However, the combination of Maliszewski et al. and Hanson fails to explicitly disclose the length of the further tower segment is selectable between a predetermined minimum length and a predetermined maximum length, wherein the minimum height of

the tower is the sum of the predetermined lengths of the first and second conical tower segments, the minimum length of the first cylindrical tower segment, the minimum length of the further tower segment, and the length of the connecting element , and wherein the maximum height of the tower is the sum of the predetermined lengths of the first and second conical tower segments, the maximum length of the first cylindrical tower segment, the maximum length of the further tower segment, and the length of the connecting element.

Maliszewski et al. discloses: "The towers of this invention can range in height from 32 to over 80 meters" (column 2 lines 32-34); parameters for tower segments for towers which are within the range of 50 meters (column 2 lines 35-37); parameters for tower segments which are within the range of 60-80 meters (column 2 lines 23-26); for the conical segments, the lengths are determined based on the design height of the tower (column 2 lines 2-4); and claims 10 and 16 claim the exact number of segments for different design tower heights.

Therefore, it would have been obvious to one of ordinary skill in the art to determine that the different segments of the tower of Maliszewski et al. have maximum and minimum predetermined lengths in order to create towers at the desired height specifications using an exact amount of segment sections. Further, it would have been obvious to one of ordinary skill in the art to use appropriate heights for the tower segments since it has been held that changes in size and/or proportion do not constitute patentable subject matter if the claimed relative dimensions would not perform

differently than the prior art device (In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984)).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Edelstein (6,191,355) teaches a multi section utility pole with conical and straight sections.

Archer et al. (3,793,794) teaches stacked column sections filled with concrete for added support.

Yoshida et al. (6,408,575) teaches a wind turbine column with cylindrical sections having identical wall thicknesses from top to bottom.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HOLLOWAY whose telephone number is (571) 270-5786. The examiner can normally be reached on M-F 8:30-6; Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on 571-272-6782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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